

§ 1.923

38 CFR Ch. I (7-1-97 Edition)

information from consumer reporting agencies, or which obtain such information for the purpose of furnishing it to consumer reporting agencies.

(Authority: 38 U.S.C. 5701 (g), (i); 31 U.S.C. 952)

[46 FR 62058, Dec. 22, 1981, as amended at 52 FR 42107, Nov. 3, 1987]

§ 1.923 Contracting for collection services.

(a) VA has authority to contract for collection services to recover delinquent debts, provided that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection and refer the matter for litigation shall be retained by VA;

(2) The contractor shall be subject to 38 U.S.C. 5701, and to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*

(3) The contractor shall be required to strictly account for all amounts collected;

(4) Upon returning an account to VA for subsequent referral to the Department of Justice for litigation, the contractor must agree to provide any data contained in its files relating to § 1.951.

(b) Funding of collection service contracts:

(1) VA may fund a collection service contract on a fixed-fee basis (i.e., payment of a fixed fee determined without regard to the amount actually collected under the contract). Payment of the fee under this type of contract must be charged to available appropriations;

(2) VA may also fund a collection service contract on a contingent-fee basis (i.e., by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract). The fee should be based upon a percentage of the amount collected, consistent with prevailing commercial practice;

(3) VA may enter into a contract under paragraph (b)(1) of this section only if and to the extent that funding for the contract is provided for in advance by an appropriation act or other legislation, except that this require-

ment does not apply to the use of a revolving fund authorized by statute;

(4) Except as authorized under paragraphs (b)(2) and (b)(5) of this section, or unless otherwise specifically provided by law, VA shall deposit all amounts recovered under collection service contracts for Loan Guaranty debts into the Loan Guaranty Revolving Fund, and for all other debts in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(5) For benefit overpayments recovered under collection service contract, VA, pursuant to 31 U.S.C. 3302, shall deposit:

(i) Amounts equal to the original overpayments in the appropriations account from which the overpayments were made, and

(ii) Amount of interest or administrative costs in the Treasury as miscellaneous receipts.

(Authority: 31 U.S.C. 3718)

[52 FR 42107, Nov. 3, 1987]

§ 1.924 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor or in order to collect or compromise a debt in accordance with §§ 1.900 through 1.954, VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) VA may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors hired by VA, in order to facilitate the collection or compromise of debts. A mailing address obtained under paragraph (a) of this section may be disclosed to a consumer reporting agency under authority of § 1.922 only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) VA will insure that procedures established under this section comply with the Privacy Act (5 U.S.C. 552a) and the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

(Authority: 31 U.S.C. 3711)

[52 FR 42108, Nov. 3, 1987]

§ 1.925 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or the Federal Employees Retirement System (FERS) be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management in accordance with such regulations prescribed by the Director of that Office. See 5 CFR part 831, subpart R (§§ 831.1801 through 831.1808) and part 845, subpart O (§§ 845.401 through 845.408). In addition, VA may also offset against a Federal employee's final salary check and lump sum leave payment, unless they represent continuation of an offset against current salary initiated in accordance with §§ 1.980 through 1.994. See § 1.912 for procedures for offset against a final salary check and lump sum leave payment.

(b) When making a request to the Office of Personnel Management for administrative offset under paragraph (a) of this section, VA shall include a written certification that:

(1) The debtor owes VA a debt, including the amount of the debt;

(2) VA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) VA has complied with §§ 1.911, 1.912, 1.912a, or 4 CFR 102.3 including any required hearing or review.

(c) Once VA decides to request administrative offset from the Civil Service Retirement and Disability Fund or Federal Employees Retirement System (FERS) under paragraph (a) of this section, it shall make the request as soon as possible after completion of the applicable procedures in order that the Office of Personnel Management may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive

payments from the Fund or FERS. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statutes of limitations. At such time as the debtor makes a claim for payments from the Fund or FERS, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that such offset will create financial hardship.

(d) If VA collects all or part of the debt by other means before deductions are made or completed in accordance with paragraph (a) of this section, VA shall promptly act to modify or terminate its request for offset under paragraph (a) of this section.

(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of VA's determination with respect to the amount and validity of the debt waiver under 5 U.S.C. 5584 or 38 U.S.C. 5302, or providing or not providing an oral hearing.

(Authority: 5 U.S.C. 8461; 31 U.S.C. 3711, 3716)

[52 FR 42108, Nov. 3, 1987]

§ 1.926 Referral of VA debts.

(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of offsetting the debt from any payment, except salary, (see paragraph (e) of this section), made by such agency to the person indebted to VA.

(b) VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date VA's right to collect the debt first accrued.

(c) This certification will also state that VA provided the debtor with written notice of:

(1) The nature and amount of the debt;

(2) VA's intention to pursue collection by offset procedures;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the